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OFFICE OF PETITIONS

In re Application of:

Nichol

Filed: 30 June, 1998

Application No. 09/106,841

Attorney Docket No. (None)

DECISION ON PETITION

This is a decision on the renewed petition filed herein on 30 October, 2002, under 37 C.F.R. §1.137(b)¹ to revive the above-identified application.

The petition is **GRANTED**.

NOTE: The Revocation/Power of Attorney filed by Petitioner hereby is acknowledged and accepted--however, due to computer software problems at the time of this writing, it is uncertain whether data entered into PALM has been updated in the system.

Petitioner is cautioned to contact the Office to confirm the update.²

BACKGROUND

The record indicates that:

- Petitioner failed to respond timely and properly to a final Office action mailed on 3 January,

¹ Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

² On Sunday 17 November, 2002, the undersigned attorney attempted to leave a telephone message to alert Petitioner's Counsel to this matter, however, no phone mail was available at Counsel's number at that time.

2001, and due (absent extension of time) on or before 3 July, 2001;

- the instant application went abandoned after midnight 3 July, 2001;
- Notice of Abandonment was mailed on 17 July, 2001;
- Petitioner's 26 September, 2001, request for withdrawal of the holding of abandonment was dismissed on 15 March, 2001;
- 14 May, 2002, Petitioner filed a petition (and fee), statement of unintentional delay and an amendment, which amendment was not a proper response to a final office action,³ and due to that improper response the petition was dismissed on 3 September, 2002;
- Petitioner filed the instant petition (with fee), a request for continued examination (RCE) (with fee) and submission on 30 October, 2002 (the required reply), and the statement of unintentional delay previously was submitted and is considered continuing.⁴

The instant application is being forwarded to Technology Center 3600 for further processing in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

³ The proper response to the final Office action (see: Fn. 1, item (1); MPEP 711.03(c)) must be in the form of: (a) an amendment *prima facie* placing the application in condition for allowance; (b) a Notice of Appeal; or © a request for continued examination (RCE) under 37 C.F.R. §1.114 or a continuing application.

⁴ If this presumption is in error, Petitioner's duty of candor to the Office requires that he immediately so notify the Office.